

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

CIVIL ACTION NO. 3:17-01362

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,

Defendants.

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CABELL COUNTY COMMISSION,

Plaintiff,

v.

CIVIL ACTION NO. 3:17-01665

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,

Defendants.

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**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants respectfully submit the Sixth Circuit's decision in *In re Nat'l Prescription Opiate Litigation*, 2020 WL 1875174 (6th Cir. Apr. 15, 2020) (Exhibit A), as supplemental authority relevant to Defendants' Opposition to Plaintiffs' Motion to Adopt the MDL Court's August 19, 2019, Order Regarding the Federal Controlled Substances Act that was Entered in Different Cases (Dkt. No. 235).

The Sixth Circuit issued a writ of mandamus to strike amendments that had been allowed by the MDL court to a complaint against pharmacy defendants, but did not meet the standards required by the Federal Rules. The Court of Appeals declared that the MDL court's "mistake was

to think it had authority to disregard the [Federal] Rules' requirements" in "favor of enhancing the efficiency of the MDL as a whole." *Id.* at \*7. The Court found that the extraordinary remedy of mandamus was justified and held that: "[t]he rule of law applies in multidistrict litigation under 28 U.S.C. § 1407 just as it does in any individual case. ... [A]s the Supreme Court has made clear, every case in an MDL (other than cases for which there is a consolidated complaint) retains its individual character." *Id.* at \*1; *see also id.* at \*7 (relying on *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405 (2015), on which Defendants relied in their opposition filed in this Court, *see* Dkt No. 235 at 7).

The Sixth Circuit's decision provides additional support for Defendants' argument that the MDL court's August 19, 2019 ruling, made in different cases, is not law of the case or binding on this Court in this case. *See* Dkt No. 235 at 2–12. The Sixth Circuit decision is especially relevant here because the August 19 ruling was an interlocutory order in a suit brought by two Ohio counties involving Ohio common law and RICO, not a public nuisance claim under West Virginia law as raised here. The Sixth Circuit's opinion emphasized two related principles: (1) "Section 1407 refers to individual 'actions' which may be transferred to a single district court, not to any monolithic multidistrict 'action' created by transfer," and (2) "a district court's decision ... in an individual case [must] depend[] on the record in that case and not others." *In re Nat'l Prescription Opiate Litig.*, 2020 WL 1875174, at \*4 (quotation omitted).

Dated: April 23, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 23rd day of April, the foregoing **“Defendants’ Notice Of Supplemental Authority”** was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jeffrey M Wakefield  
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